Grand Flooring & Plastering Company *and* Local 115, Operative Plasterers' and Cement Masons' International Association of the United States and Canada, AFL-CIO. Case 7-CA-21729

30 March 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

Upon a charge filed by the Union 8 February 1983 the General Counsel of the National Labor Relations Board issued a complaint 16 March 1983 against the Company, the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. The complaint alleges that since about 8 August 1982 the Respondent has failed and refused to make contractual payments into various employees fringe benefit funds. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On 12 September 1983 the General Counsel filed a motion to transfer the case to the Board and for Default Judgment. On 5 October 1983 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent did not file a response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 10 days from service of the complaint, unless good cause is shown. The complaint states that, unless an answer is filed within 10 days of service, "all of the allegations in the Complaint shall be deemed to be admitted true and may be so found by the Board." Further, the undisputed allegations in the Motion for Default Judgment disclose that the General Counsel, by letters dated 18 May and 20 June 1983, notified the Respondent that unless an answer was received immediately, a Motion for Default Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Judgment.[1]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Michigan corporation, is a subcontractor engaged in installing flooring and plastering with a principal place of business in Grand Rapids, Michigan, where it annually purchases and receives goods and materials valued in excess of $50,000 directly from suppliers outside the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Unit*

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All plasterer employees employed by the Respondent at its Grand Rapids, Michigan facility, but excluding office clerical employees, guards and supervisors as defined in the Act.

B. *The Respondent's Refusal to Bargain*

The Union has been the exclusive representative for purposes of collective bargaining of the Respondent's employees in the unit described above by virtue of a collective-bargaining agreement effective by its terms from 1 June 1982 through 30 April 1983 and, by virtue of Section 9(a) of the Act, has been the exclusive bargaining representative of all employees in the above unit.

Since about 8 August 1982 the Respondent has unilaterally failed and refused to make payments into various employees' fringe benefit funds for the benefit of its employees as required by the collective-bargaining agreement.

We find that, by this conduct, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. Grand Flooring & Plastering Company is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

[1] In granting the General Counsel's Motion for Default Judgment, Chairman Dotson specifically relies on the total failure of the Respondent to contest either the factual allegations or the legal conclusions of the General Counsel's complaint. Thus, the Chairman regards this proceeding as being without precedential value.

2. Local 115, Operative Plasterers' and Cement Masons' International Association of the United States and Canada, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. All plasterer employees employed by the Respondent at its Grand Rapids, Michigan facility, but excluding office clerical employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. At all times material here, the Union has been the exclusive collective-bargaining representative of all the employees in the appropriate unit for the purposes of collective bargaining within the meaning of Section 9(a) of the Act.

5. The Respondent has committed unfair labor practices within the meaning of Section 8(a)(5) and (1) by unilaterally failing and refusing to make payments into various employees' fringe benefit funds for the benefit of its employees as required by the collective-bargaining agreement between the parties, effective by its terms from 1 June 1982 through 30 April 1983.

6. The described conduct is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist and take certain affirmative action designed to effectuate the policies of the Act. Accordingly, having found that the Respondent failed and refused to make payments into various employee fringe benefit funds as required by the collective-bargaining agreement between the parties without prior notice to or bargaining with the Union, we shall order the Respondent to pay into the appropriate funds all those contributions it has failed to pay by the unilateral discontinuance of contractual payments about 8 August 1982. See *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979).[2] If the employees incurred any expenses due to the Respondent's failure to make the above payments, we shall also require the Respondent to reimburse the employees for those expenses, plus interest to be computed in the manner set forth in *Florida Steel Corp.*, 231 NLRB 651 (1977).

ORDER

The National Labor Relations Board orders that the Respondent, Grand Flooring & Plastering Company, Grand Rapids, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain collectively with the Union as the exclusive representative of its employees in the unit described below by unilaterally discontinuing its contributions to various employees' fringe benefit funds for the benefit of its employees as set forth in the collective-bargaining agreement between the parties. The appropriate unit is:

> All plasterer employees employed by the Respondent at its Grand Rapids, Michigan facility, but excluding office clerical employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Pay into the appropriate funds all those contributions it has failed to pay by the unilateral discontinuance of contractual payments about 8 August 1982 and reimburse the employees for any expenses they may have incurred as a result of the Respondent's unlawful conduct in the manner set forth in the remedy section of the decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its Grand Rapids, Michigan facility copies of the attached notice marked "Appendix."[3] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

[2] Member Hunter finds it necessary to leave to the compliance stage of this proceeding the identification of the particular funds which would be mandatory subjects of bargaining and therefore eligible for the remedy granted by the Board's Order.

[3] If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain collectively with Local 115, Operative Plasterers' and Cement Masons' International Association of the United States and Canada, AFL–CIO, as your exclusive representative in the appropriate unit by unilaterally discontinuing contributions to the employees' fringe benefits funds set forth in the collective-bargaining agreement. The appropriate unit is:

> All plasterer employees employed by us at our Grand Rapids, Michigan facility, but excluding office clerical employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL pay into the appropriate funds all the contributions we have failed to make, and WE WILL reimburse our employees for any expenses they may have incurred as a result of our discontinuance of payments.

GRAND FLOORING & PLASTERING COMPANY